



SENATE JUDICIARY

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The Right to Self-Defense

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By Wendy McElroy

On June 27, in the case of Castle Rock v. Gonzales, the Supreme Court found that Jessica Gonzales did not have a constitutional right to police protection even in the presence of a restraining order.

By a vote of 7-to-2, the Supreme Court ruled that Gonzales has no right to sue her local police department for failing to protect her and her children from her estranged husband.

The post-mortem discussion on Gonzales has been fiery but it has missed an obvious point. If the government won't protect you, then you have to take responsibility for your own self-defense and that of your family. The court's ruling is a sad decision, but one that every victim and/or potential victim of violence must note: calling the police is not enough. You must also be ready to defend yourself.

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In 1999, Gonzales obtained a restraining order against her estranged husband Simon, which limited his access to their children. On June 22, 1999, Simon abducted their three daughters. Though the Castle Rock police department disputes some of the details of what happened next, the two sides are in basic agreement: After her daughters' abduction, Gonzales repeatedly phoned the police for assistance. Officers visited the home. Believing Simon to be non-violent and, arguably, in compliance with the limited access granted by the restraining order, the police did nothing.

The next morning, Simon committed "suicide by cop." He shot a gun repeatedly through a police station window and was killed by returned fire. The murdered bodies of Leslie, 7, Kathryn, 9 and Rebecca, 10 were found in Simon's pickup truck.

In her lawsuit, Gonzales claimed the police violated her 14th Amendment right to due process and sued them for \$30 million. She won at the Appeals level.

What were the arguments that won and lost in the Supreme Court?

Winners: local officials fell back upon a rich history of court decisions that found the police to have no constitutional obligation to protect individuals from private individuals. In 1856, the U.S. Supreme Court (South v. Maryland) found that law enforcement officers had no affirmative duty to provide such protection. In 1982 (Bowers v. DeVito), the Court of Appeals, Seventh Circuit held, "...there is no Constitutional right to be protected by the state against being murdered by criminals or madmen."

Later court decisions have concurred.

Losers: anti-domestic violence advocates and women's groups, such as the National Association of Women Lawyers, failed to establish that restraining orders were constitutional entitlements. If they had succeeded, the enforcement of such orders would have been guaranteed by due process. Failure to enforce them would have been grounds for a lawsuit against the police, a precedent that local officials feared would flood them with expensive litigation.

Public analysis of Rock v. Gonzales has been largely defined by these two opposing positions.

A third position cries out: Given the court's position that the police are not obliged to protect us, responsible adults need the ability to defend themselves. Thus, no law or policy should impede the access to gun